TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 419.

THE TERRITORY OF NEW MEXICO *EX REL.* CALEDONIAN COAL COMPANY, APPELLANT,

vs.

Ira A. Abbott,

~~BENJAMIN S. BAKER~~, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO AND JUDGE OF THE SECOND JUDICIAL DISTRICT COURT THEREOF, &c.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

FILED NOVEMBER 3, 1904.

(19,519.)

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vs.

BENJAMIN S. BAKER, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO AND JUDGE OF THE SECOND JUDICIAL DISTRICT COURT THEREOF, &c.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 27, 190

1 Be it remembered, that heretofore, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fé, the seat of government, on the first Wednesday after the first Monday in January, A. D. 1904, on the twenty-third — of the said regular term, the same being the 12th day of September, A. D. 1904, the following among other proceedings were had and entered of record, to-wit:

TERRITORY *ex Rel.* CALEDONIAN COAL COMPANY, Relator, *vs.* Hon. BENJAMIN S. BAKER, Associate Justice, etc., *et als.*, Respondents.	No. 1063.	Mandamus.

Now comes Neill B. Field, Esq., attorney for the relators herein, and asks leave of the court to file a petition for a mandamus against the Honorable Benjamin S. Baker, associate justice, etc. *et al.*, and there being no objection, it is ordered by the court that the said relator herein be and *he* hereby is granted leave to file *his* said petition herein.

And afterwards, on to wit the 12th day of September, A. D., 1904, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico, a petition for mandamus, against the Honorable Benjamin S. Baker, associate justice, etc., *et als.*, which said petition for mandamus, is in words and figures following to-wit:—

2 TERRITORY OF NEW MEXICO:

In the Supreme Court, Adjourned January Term, 1904.

To the honorable chief justice and associate justices of the supreme court of the Territory of New Mexico:

The Caledonian Coal Company, a corporation organized and existing under the laws of the Territory of New Mexico, informing, shows to the court that heretofore, to-wit, on the 17th day of February, 1904, it commenced an action in the district court of the second judicial district of the Territory of New Mexico, sitting for the trial of causes arising under the Constitution and laws of the United States, against the Santa Fe Pacific Railroad Company, the Atchison, Topeka and Santa Fe Railway Company, the Colorado Fuel and Iron Company and the American Fuel Company, seeking to recover damages for alleged violations of the act of Congress entitled "An act to regulate commerce," approved February 4th, 1887, and the various acts amendatory thereof, and also the act of Congress entitled "An act to protect trade and commerce against unlawful re-

straints and monopolies," approved July 2d, 1890, and such proceedings were had therein that on to-wit, the 13th day of May, 1904, a summons duly issued out of the office of the clerk of the district court of the second judicial district was duly served upon the said defendant, The Santa Fe Pacific Railroad Company, by the United States marshal for the Territory of New Mexico, who made return thereon in the following language:

"I, C. M. Foraker, United States marshal for the Territory of New Mexico, do hereby certify that I received the within summons on the 31st day of March, 1904, * * * I further certify that I served the said summons on the defendant, The Santa Fe Pacific Railroad Company, at the second judicial district aforesaid, on the 13th day of May, 1904, by delivering a true copy thereof, with a copy of the complaint thereto attached, to E. P. Ripley, president of the said defendant corporation."

Relator further shows that at the time of the service of the said summons upon the said E. P. Ripley, he, the said E. P. Ripley, was president of the said Santa Fe Pacific Railroad Company, which is a corporation created, organized and existing under the provisions of an act of the Congress of the United States, entitled "An act to define the rights of purchasers under mortgages authorized by an act of Congress approved April twentieth, eighteen hundred
3 and seventy-one, concerning the Atlantic and Pacific Railroad Company," approved March 3d, 1897, and the said Santa Fe Pacific Railroad Company was, at the time of the commission of the grievances in the said cause alleged, the owner of a line of railroad within the said second judicial district and elsewhere within the Territory of New Mexico, but which, at the time of the institution of this suit, had been sold and transferred to, and is operated by, its co-defendant, The Atchison, Topeka and Santa Fe Railway Company, under a conveyance authorized to be made by an act of the Congress of the United States entitled "An act authorizing the Santa Fe Pacific Railroad Company to sell or lease its railroad property and franchises, and for other purposes," approved June 27th, 1902, and was and still is the owner of several hundred thousand acres of land within the second judicial district aforesaid, and the said Santa Fe Pacific Railroad Company was and is prosecuting, and there were and are actually pending in the district court of the county of Bernalillo in the Territory of New Mexico, within said district, suits in relation to the title and right of possession of the said Santa Fe Pacific Railroad Company to parts and parcels of the land aforesaid; that all of the said lands were acquired by the said Santa Fe Pacific Railroad Company as the successor of the Atlantic and Pacific Railroad Company, to which they were granted by an act of the Congress of the United States, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July 27th, 1866, and the said Santa Fe Pacific Railroad Company, as such successor, acquired all of the rights, privileges

and franchises which had been theretofore granted to the Atlantic and Pacific Railroad Company, including the right of eminent domain within said Territory of New Mexico.

Relator further shows that it is advised by counsel and therefore charges the fact to be that by reason of the facts hereinbefore alleged, the said Santa Fe Pacific Railroad Company is an "inhabitant" of the second judicial district aforesaid, and by reason of the presence of its president, E. P. Ripley, within the Territory of New Mexico, and within the second judicial district aforesaid, the said Santa Fe Pacific Railroad Company was "found" within the said second
4 judicial district, within the meaning of the said acts of Congress, and by reason of the service of the process as aforesaid upon the said E. P. Ripley, as president as aforesaid, became subject to the jurisdiction of the district court of the second judicial district, sitting for the trial of causes arising under the Constitution and laws of the United States, but, notwithstanding the facts hereinbefore alleged, the Honorable Benjamin S. Baker, associate justice of the supreme court of the Territory of New Mexico, and judge of the district court of the second judicial district thereof, did, on the 29th day of August, 1904, quash the said marshal's return of the said process so far as the same related to the said defendant, The Santa Fe Pacific Railroad Company, and did refuse to assume jurisdiction of the said cause so far as the said defendant, The Santa Fe Pacific Railroad Company is concerned, and did refuse to require the said defendant, The Santa Fe Pacific Railroad Company, to answer the declaration or complaint in said cause, to the manifest wrong and injury of your relator.

Your relator craves leave to refer to each and every of the said acts of Congress hereinbefore mentioned, and prays that the same and each of them may be taken and considered as part of this information with the same effect as if the same and each of them had been fully and at large set forth and incorporated herein, and brings into court copies of each and every of said acts of Congress for inspection by the court in the premises.

Wherefore your relator prays that an alternative writ of mandamus may issue, directed to the Honorable Benjamin S. Baker, associate justice of the supreme court of the Territory of New Mexico, and judge of the district court of the second judicial district thereof, commanding and directing him, and the said district court of the second judicial district, sitting for the trial of causes arising under the Constitution and laws of the United States, over which he presides, to assume jurisdiction over the said cause so far as the same relates to the said defendant, The Santa Fe Pacific Railroad Company, and to order and direct the said Santa Fe Pacific Rail-
5 road Company to plead, answer or demur therein, within such reasonable time as may be fixed by the said court, and to proceed with said cause so far as said defendant, The Santa Fe Pacific Railroad Company, is concerned, as law and justice may require, and to show cause before this honorable court at some early

day to be fixed, why the said alternative writ of mandamus should not be made peremptory, and your said relator will ever pray etc.

NEILL B. FIELD,
Attorney for Relator.

TERRITORY OF NEW MEXICO, }
County of Bernalillo. }

Neill B. Field, of lawful age, being first duly sworn, on his oath deposes and says, that he is attorney for the relator in the foregoing information; that he has read the same and knows the contents thereof, and verily believes the allegations therein to be true.

NEILL B. FIELD.

Subscribed and sworn to before me by Neill B. Field this 8th day of September, 1904.

[NOTARIAL SEAL.] FRANK H. MOORE,
Notary Public, Bernalillo County, New Mexico.

6 And afterwards, on to-wit, on the twenty-fourth day of the said regular term of the supreme court of the Territory of New Mexico, the same being the 12th day of September, A. D., 1904 the following among other proceedings were had and entered of record, to-wit:

TERRITORY *ex Rel.* CALEDONIAN COAL CO., Relator,
vs.
Hon. BENJ. S. BAKER, Associate Justice, etc., *et al.*, Respondents. } No. 1063. Mandamus.

This cause coming on to be heard upon the petition of relators herein, for a rule on the respondents herein to show cause why a peremptory writ of mandamus should not issue against them in the premises herein, and the same having been argued by counsel, and submitted to and taken under advisement by the court, and the court being now sufficiently advised in the premises, grants the said petition; it is therefore considered and adjudged that a rule do issue upon the said Honorable Benjamin S. Baker, associate justice etc. *et als.*, commanding them to show cause forthwith, why a peremptory writ of mandamus should not issue against them in the premises herein.

And afterwards, on to-wit, the 13th day of September, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico, a return herein, which said return was and is in words and figures, following to wit:—

7 In the Supreme Court of New Mexico, Adjourned Term of January, 1904.

THE TERRITORY OF NEW MEXICO *ex Rel.* THE CALEDONIAN COAL COMPANY, Relator,
vs.
The Hon. BENJAMIN S. BAKER, Associate Justice of the Supreme Court, and the District Court for the 2nd Judicial District, Respondent. } No. —.

To the honorables the chief justice and the associate justices of the supreme court of the Territory of New Mexico:

Now comes Benjamin S. Baker, associate justice of the supreme court of the Territory of New Mexico, and judge of the second judicial district court therof, and said district court, and for *return* to the rule to show cause why a peremptory writ of mandamus should not issue, heretofore issued by said supreme court against him, on application and information of the Caledonian Coal Company, says:

1st. That it is true that heretofore, to wit, on the seventeenth (17th) day of February, A. D. 1904, the said The Caledonian Coal Company commenced an action in the district court of the second judicial district of the Territory of New Mexico, sitting for the trial of causes arising under the Constitution and laws of the United States, against The Santa Fe-Pacific Railroad Company and the other defendants named in the petition herein, in which petition it was sought to recover damages for alleged violations of the act of Congress entitled "An act to regulate commerce," approved February 4th, 1887, and the various acts amendatory thereof, and also the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2nd, 1890; and that it is true that such proceedings were had
8 therein that on the thirteenth (13th) day of May, A. D. 1904, a summons duly issued out of the office of the clerk of the district court of the second judicial district; but this respondent denies that the same was duly or otherwise served upon the said defendant, The Santa Fe-Pacific Railroad Company, by the United States marshal for the Territory of New Mexico; but this respondent states that the said United States marshal made return upon said summons in manner and form as set out in the petition of relator herein.

2nd. That thereafter such proceedings were had in said cause that the said Santa Fe-Pacific Railroad Company entered its special appearance therein and filed its motion to quash the return of service and service of process upon the defendant, The Santa Fe-Pacific Railroad Company, which said special appearance and motion are in words and figures following, to wit:

"In the District Court of the Second Judicial District of the Territory of New Mexico, Sitting for the Trial of Causes Arising under the Constitution and Laws of the United States.

THE CALEDONIAN COAL COMPANY, Plaintiff,
vs.
THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY *et als.*, Defendants. } No. 1183.

Special appearance and motion to quash return of service and service of process upon the defendant The Santa Fe Pacific Railroad Company.

Now comes the defendant, The Santa Fe Pacific Railroad Company, by R. E. Twitchell, its attorney, and enters its appearance herein specially for the purposes of this motion and no other purpose, and moves the court to quash the service of process herein and the return thereon, on the following grounds:

1. That the said service of process was pretended to be made upon one E. P. Ripley, the president of the said company, who at the time of the pretended service of said process, to wit, on May 9, 1904, was only casually in the Territory of New Mexico and was merely passing through the Territory of New Mexico, en route from the State of California to the city of Chicago, in the State of Illinois.

2. That the pretended service upon the said E. P. Ripley was made when the said E. P. Ripley was not in the Territory of New Mexico representing the defendant railroad company in any capacity whatever, and said service was attempted and pretended to be made when the said E. P. Ripley was only temporarily within the Territory of New Mexico.

3. That the said E. P. Ripley, upon whom the pretended service of said process was attempted to be made, is a non-resident of the Territory of New Mexico and does not reside within the Territory of New Mexico nor have his place of domicile therein, and when the pretended service was attempted to have been made upon him, the said E. P. Ripley was not present in the Territory of New Mexico officially as the president of the said Santa Fe Pacific Railroad Company, nor representing the said corporation in its business in said Territory of New Mexico.

4. That the said E. P. Ripley is not a proper person upon whom process should be served within the Territory of New Mexico.

9 5. That the said defendant company has no railroad property in the Territory of New Mexico, and is a corporation existing under and by virtue of an act of the Congress of the United States, and by means thereof it is not necessary to appoint an agent in the Territory of New Mexico upon whom process may be served.

6. That the right of the Santa Fe Railroad Company to do business in the Territory of New Mexico is derived from the Congress of

the United States and not from the Territory of New Mexico, and that the laws governing the service of process upon corporations in the Territory of New Mexico do not apply and are not applicable to the said defendant, The Santa Fe Pacific Railroad Company.

7. That the said pretended service of process is wholly illegal and void and of no effect in law and it is not sufficient for the court to acquire jurisdiction over the said defendant, The Santa Fe Pacific Railroad Company.

R. E. TWITCHELL,
Attorney for Defendant, The Santa Fe Pacific Railroad Company."

3rd. That thereafter the said motion last above set forth having come on for hearing in said district court, there was filed and presented to the court in support thereof an affidavit, which said affidavit was and is in the words and figures following, to wit:

"In the District Court for the Second Judicial District of the Territory of New Mexico for the Trial of Causes Arising under the Constitution and Laws of the United States.

CALEDONIAN COAL COMPANY, Plaintiff,
vs.
SANTA FE PACIFIC RAILROAD COMPANY, THE ATCHISON, Topeka and Santa Fe Railway Company, Colorado Fuel and Iron Company, and The American Fuel Company, Defendants. } No. 1183.

Affidavit.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

E. P. Ripley, being first duly sworn, upon his oath deposes and says that he is the president of the Santa Fe Pacific Railroad Company, and was such president on the 12th day of May, 1904, when summons in the above action was served upon him while he was passing through the Territory of New Mexico as a passenger upon one of the trains of the Atchison Topeka and Santa Fe Railway Company. He further states that in the articles of incorporation, incorporating the Santa Fe Pacific Railroad Company, under the act of March 3, 1897, no place is fixed for keeping the principal office or place of business of said railroad company, as none was required to be stated in said act of Congress, but that the by laws of said Santa Fe Pacific Railroad Company require annual meetings of its board of directors to be held at the office of said company in the city of New York. He further states that since the sale of the railroad of the Santa Fe Pacific Railroad Company, said Santa Fe Pacific Railroad Company has had no property except the lands ac-

quired by it under foreclosure proceedings under a mortgage of the Atlantic and Pacific Railroad Company and which remains undisposed of; that its land commissioner has his office in the city of Topeka, State of Kansas. This affiant, as president of the Santa Fe Pacific Railroad Company, has and has had heretofore his office in the city of Chicago and State of Illinois. He further states that since the sale of its said railroad, said Santa Fe Pacific Railroad Company has had no office or place of business in the Territory of New Mexico.

And further deponent saith not.

E. P. RIPLEY.

Sworn to before me and subscribed in my presence this 1st day of June, 1904. My commission expires April 17th, 1905.

EDWARD J. ENGEL,
Notary Public."

10 4th. That the said affidavit last above set forth and the facts therein alleged were in no wise controverted by the said relator herein, plaintiff in said cause, although the said relator herein, as plaintiff in said cause, upon said hearing, also submitted proofs to the effect that the Santa Fe-Pacific Railroad Company had instituted and was prosecuting actions in ejectment in the district court against trespassers upon its property in the Territory of New Mexico, it appearing that said suits were instituted by the said Santa Fe-Pacific Railroad Company prior to the sale of its railroad property and franchises to the Atchison Topeka & Santa Fe Railway Company; all of which said proofs both for and against the said motion to quash, were offered and received without objection by either party to said cause.

5th. That thereafter, upon briefs submitted by counsel for the relator herein and for the said Santa Fe-Pacific Railroad Company, your respondent being fully advised in the premises and having given due and full consideration to the merits of said motion to quash, sustained the same and quashed the return of service and service of process upon the said defendant, The Santa Fe-Pacific Railroad Company.

6th. And your respondent further states that, upon the proofs submitted and upon which proofs, together with the arguments and authorities to it presented, your respondent sustained the motion to quash hereinbefore mentioned, your respondent held that the said Santa Fe-Pacific Railroad Company was not an inhabitant of the second judicial district aforesaid, and was not by reason of the casual presence of its president E. P. Ripley within the Territory of New Mexico or within the second judicial district thereof, and held and determined that the said Santa Fe-Pacific Railroad Company was not found within the said second judicial district within the meaning of any act of the Congress of the United States or the laws of the

Territory of New Mexico, and held and adjudged that by reason of the alleged service of process upon the said E. P. Ripley, president of said railroad company, the said Santa Fe-Pacific Railroad Company was not subjected to the jurisdiction of the said district court of the
11 said second judicial district, which said order sustaining said motion to quash was made and entered of record by your respondent on the 29th day of August, A. D. 1904; and respondent further denies that said order quashing the service of process and the return thereof, and its refusal to assume jurisdiction of the said cause so far as the said defendant, The Santa Fe-Pacific Railroad Company, is concerned, and the refusal of your respondent to require the said Santa Fe-Pacific Railroad Company to answer the declaration or complaint in said cause, was to the manifest wrong or injury of the relator herein.

Wherefore by reason of the law and the facts in this case, your respondent says that he ought not to be compelled by a writ of mandamus to assume jurisdiction over the said cause so far as the same relates to the said defendant, The Santa Fe-Pacific Railroad Company, and that he ought not to be compelled to order or direct the said Santa Fe-Pacific Railroad Company to plead, answer or demur therein, nor to proceed with said cause so far as said defendant, The Santa Fe-Pacific Railroad Company, is concerned, and having fully answered and discharged the rule heretofore entered herein, this respondent prays that he may be hence dismissed, with costs.

B. S. BAKER,
Associate Justice of the Supreme Court of the Territory of New Mexico and Judge of the Second Judicial Distri- Court, Respondent.

R. E. TWITCHELL,
Attorney for Respondent.

12 And afterwards, on to-wit the twenty-fourth day of the said regular term of the supreme court of the Territory of New Mexico, the same being the 13th day of September, A. D., 1904, the following among other proceedings were had and entered of record to-wit:—

TERRITORY OF NEW MEXICO *ex Rel.* CALEDONIAN Coal Company, Relator, *vs.* Hon. BENJAMIN S. BAKER, Associate Justice, etc., *et als.*, Respondents.	No. 1063. Mandamus.

This cause coming on before the court upon the return of the respondents herein in answer to a rule of this court, commanding the said respondents to show cause why a peremptory writ of mandamus should not be granted herein, is argued by R. E. Twitchell Esq. for respondents and Neill B. Field, Esq. for relators, and sub-

mitted to the court, and the court not being sufficiently advised in the premises, takes the same under advisement.

And afterwards, on to-wit on the twenty-fifth day of the said regular term, of the supreme court of the Territory of New Mexico, the same being the 14th day of September, A. D., 1904, the following among other proceedings wer- had and entered of record to-wit:—

TERRITORY OF NEW MEXICO *ex Rel.* CALEDONIAN Coal Company, Relator,
vs.
Hon. BENJAMIN S. BAKER, Associate Justice, etc., *et al.*, Respondents.
} No. 1063. Mandamus.

This cause having been argued by counsel, and submitted to
13 and taken under advisement by the court upon a former day of the present term, and the court being now sufficiently advised in the premises, announces its decision denying the petition for a mandamus herein, and sustaining the answer of respondents, for reasons stated in the opinion of the court on file; it is therefore considered and adjudged by the court that the answer of respondents herein, be, and the same hereby is sustained, and that in accordance therewith the petition for a mandamus herein by relator, be and the same hereby is denied and this cause hereby is dismissed.

And now comes Neill B. Field, attorney for relator herein, and moves the court for an appeal from the judgment and decree of this court to the Supreme Court of the United States, and the court being sufficiently advised in the premises, grants the said motion; it is therefore considered and adjudged that the relator herein do have an appeal from the judgment and decree of this court, to the Supreme Court of the United States.

And afterwards, on to wit the 14th day of September, A. D., 1904, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico, an opinion by the court which said opinion was and is in words and figures as follows to wit:—

14 In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1904.

THE TERRITORY OF NEW MEXICO *ex Rel.* Caledonian Coal Company, Relator,
vs.
Hon. B. S. BAKER, Associate Justice, etc., *et al.*, Respondents.
} No. 1063. Mandamus.

Syllabus.

The facts as set up in the application and respondents' return to the order to show cause herein are insufficient to justify the issuance of a writ of mandamus.

Opinion by the Court.

MANN, *J.:*

On September 13th, 1904, the relator filed in this court its petition for a peremptory writ of mandamus against the respondent as judge of the second judicial district of the Territory of New Mexico, to compel respondent to assume jurisdiction in a cause brought by relator in the district court of the second judicial district, sitting for the trial of causes arising under the Constitution and laws of the United States, of the Santa Fe Pacific Railroad Company, a corporation organized by an act of Congress approved March 3rd, 1897.

The suit in the district court was brought by The Caledonian Coal Company, as plaintiff, against The Atchison Topeka & Santa Fe Railroad Company, The Colorado Fuel & Iron Company, The American Fuel Company and The Santa Fe Pacific Railroad Company, to recover damages against the several defendants under the act of Congress entitled "An act to regulate commerce" and subsequent acts amendatory thereto, and the act of February 4th, 1897, entitled "An act to protect trade and commerce against unlaw-
15 ful restraints and monopolies." Service was attempted to be made on the Santa Fe Pacific Railroad Company by serving a copy of a summons on one E. P. Ripley, the president of said company, while he was passing through the second judicial district, and upon the validity of that service as shown by the record the right of relator to the relief prayed for depends.

The record is clear that Mr. Ripley, when served by the marshal, was president of the Santa Fe Pacific R. R. Co.; it is undisputed that he was in the Territory casually as a sojourner, and in no way connected with any business of that company. It is also shown that the Santa Fe Pacific, prior to the time of the attempted service, had sold and disposed of its railway, road-bed, rights, franchises

and privileges, and owned no property whatever, except some lands acquired by foreclosure proceedings, within the Territory; that its board of directors held its meetings in the city of New York; that its president has his office in the city of Chicago; and that its land commissioner has his office in the city of Topeka, Kansas.

By this act of Congress of July 27th, 1866, the Atlantic & Pacific Railroad Company was authorized to build and operate a line of railroad from the States of Arkansas & Missouri to the Pacific coast, and was granted certain lands by way of a bonous for the construction of said railway. On March 3rd, 1897, Congress passed an act entitled "An act to define the rights of purchasers under mortgage authorized by an act of Congress approved April twentieth, eighteen hundred and seventy one, concerning the Atlantic & Pacific Railroad Company," and under this act the Santa Fe Pacific Company became the purchaser at the foreclosure sale and was organized as the successor of the Atlantic & Pacific Railroad Company and became the owner of the railroad and lands of said company.

By act of Congress of June 27th, 1902, the Santa Fe Pacific Railroad Company was authorized to sell or lease its railroad and franchises to the Atchison, Topeka and Santa Fe Ry. Co., a
16 Kansas corporation, and the pleadings herein show that prior to the date of the attempted service on Mr. Ripley, as president of the Santa Fe Pacific R. R. Co., the Atchison had purchased the railway, rights and franchises of the Santa Fe Pacific Company, and that the latter company was not engaged in operating any railroad in New Mexico at the time of the attempted service. The only business it is alleged that the Santa Fe Pacific Company was doing in New Mexico is that it owned lands therein and was maintaining suits in the district court of the second judicial district in connection therewith.

The act of July 2nd, 1890, under which the suit was brought by relator in the district court provides that "Any person who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be unlawful by this act may sue therefore in any circuit court of the United States in the district in which the defendant *resides or is found*" etc.

Under the facts stated, was the Santa Fe Pacific Railroad Company found in the second judicial district of New Mexico? If so, the respondent should have assumed jurisdiction of the cause against the Santa Fe Pacific Railroad Company, otherwise he properly refused to do so and the writ should be denied.

The word "found" as used in sec. 739 Revised Statute*d*, with reference to service of process in U. S. courts, is thus construed in the case of Good Hope Co. *vs.* Railway Barb. Co., 22 Federal Rep. 635.

"A foreign corporation is not 'found' within a district within the meaning of sec. 739 of the Revised Statutes for the service of process when its president comes temporarily into such district upon the business of the corporation, such corporation having no office or

place of business therein, and not having transacted any business therein, except that which the president came to settle."

17 See also: Frick *vs.* Norfolk & O. V. Rd. Co., 86 Fed. 729; U. S. *vs.* Am. Bell Tel. Co., 20 Fed. 34; R. R. Co. *vs.* Koontz, 104 U. S., 5; St. Clair *vs.* Cox, 106 U. S., 350; Canada & So. Ry. Co. *vs.* Gephart, 109 U. S., 527; Hat Sweat Band Co. *vs.* Davis Sew. Mach. Co., 31 Fed. 294; 6th Thompson on Corporations, secs. 7484-7489.

Relator contends that the above rule has no application here, for the reason that the Santa Fe Pacific Railroad Company was incorporated under an act of Congress and is therefore not a foreign corporation.

In the case of U. S. *vs.* Southern Pacific Railroad Company, 49 Federal, 297, Mr. Justice Harlan places a corporation of another State and those chartered by acts of Congress on the same footing, as to service of process. In that case he says:

"While under the acts respecting the jurisdiction of the Federal courts a corporation is a 'citizen' only of the State under whose laws it was organized, yet with respect to the district in which it may be sued, under the act of Congress of March 3, 1887, a railroad or telegraph company chartered *either by a State or by United States* is an inhabitant of any State in which it operates its lines and maintains officers for the transaction of its business" and although this case was overruled by the Supreme Court of the United States as too liberal a construction of the word 'inhabitant,' yet we think it is a fair interpretation of the word 'found' as used in the "Anti-trust act," and further believe that it is correct in making no distinction between corporation*g* of another State and those organized under an act of Congress.

The undisputed facts in this case show that the Santa Fe Pacific Railroad Company was not operating any railroad and maintained no officers for the transaction of its business within the Territory at the time the service was attempted. Congress had granted it the right to sell to the Atchison, Topeka & Santa Fe, its railroad,

18 right of way, rights and franchises, which it had done and thus ceased to do business in New Mexico. The service of the summons on Mr. Ripley while merely passing through the Territory was therefore no service on the Santa Fe Pacific Railroad Company, and the respondent properly quashed the service.

For the reasons above given the writ is denied.

EDWARD A. MANN,
Associate Justice.

We concur:

WILLIAM J. MILLS, *C. J.*
JOHN R. McFIE, *A. J.*
FRANK W. PARKER, *A. J.*
WILLIAM H. POPE, *A. J.*

TERRITORY OF NEW MEXICO, *Supreme Court,* } *ss:*

I, the undersigned, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the above and foregoing 18 pages and 13 lines, is a true, full and correct transcript of the record, pleadings and opinion in this court in a certain cause entitled Territory *ex rel.* Caledonian Coal Company relator *vs.* Hon. Benjamin S. Baker associate justice etc. *et al.* respondents and numbered 1063, as the same appears on file in my office and of record in the record of proceedings of this court.

Seal Supreme Court, Territory of New Mexico.

Witness my hand and the seal of the supreme court of the Territory of New Mexico this the 26th day of September, 1904.

JOSÉ D. SENA, *Clerk.*

19 In the Supreme Court of the United States.

TERRITORY OF NEW MEXICO *ex Rel.* CALEDONIAN COAL COMpany, Appellant,

vs.

BENJAMIN S. BAKER, Associate Justice of the Supreme Court of the Territory of New Mexico and Judge of the Second Judicial District Court Thereof, and The Second Judicial District Court of the Territory of New Mexico, Appellee-.

Assignment of Errors.

Comes now the said appellant, and shows to the court here that in the record, proceedings and judgment of the supreme court of the Territory of New Mexico in the above-entitled cause, there is manifest error, in this, to-wit:—

I.

The court erred in sustaining the sufficiency of the answer of the appellee herein.

II.

The court erred in denying the application of appellant for a mandamus as prayed for.

III.

The court erred in dismissing said cause.

Wherefore appellant prays that the judgment of the supreme court of New Mexico may be reversed, vacated and set aside, and

this cause remanded with directions to grant unto appellant a peremptory writ of mandamus as prayed for.

NEILL B. FIELD,
Attorney for Appellant.

20 [Endorsed:] In the Supreme Court of the United States. Territory of New Mexico, *ex rel.* Caledonian Coal Company, appellant, *vs.* Benjamin S. Baker, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof, and the Second Judicial District Court of the Territory of New Mexico, appellee-. Assignment of errors. Neill B. Field, attorney for appellant.

Endorsed on cover: File No. 19,519. New Mexico Territory supreme court. Term No. 419. The Territory of New Mexico *ex rel.* Caledonian Coal Company, appellant, *vs.* Benjamin S. Baker, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof, &c. Filed November 8th, 1904. File No. 19,519.